

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 23] NEW DELHI, THURSDAY, JANUARY 22, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 22nd January, 1953

S.R.O. 211.—Corrigenda.—In the Election Commission Notification No. 19/134/52-Elec.III, published in the *Gazette of India Extraordinary*, Part II, Section 3, dated the 8th January, 1953, the following corrections shall be made:—

(1) On page 46—

- (i) in line 6 for the words and figures "Respondents 4 & 6 and Respondents 3 & 5" read "respondents Nos. 4 & 6 and respondents Nos. 3 & 5."
- (ii) in line 20 for the words "to subscribe" read "from subscribing".
- (iii) in line 21 for the word "petition" read "petitioner".

(2) On page 49—

- in line 38 for the word "test" read "list".

(3) On page 52—

- (i) in line 10 for the word "filed" read "signed"
- (ii) in line 62—
 - (a) for the words "a person" read "persons"
 - (b) for the words "has" read "have"

(4) On page 53—

- (i) in line 7 for the word "the" read "and"
- (ii) in line 13 omit the word "so"
- (iii) in line 13 for the word "that" read "and".

[No. 19/134/52-Elec.III.]

S.R.O. 212.—WHEREAS the election of Shri Prabhu Dayal Chaubey, as a member of the Legislative Assembly of the State of Madhya Bharat from the Khilchipur West Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Bherusingh of Village Amlabe, Tehsil Khilchipur, District Rajgarh, Madhya Bharat;

AND WHEREAS, the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, INDORE (MADHYA BHARAT).

ELECTION PETITION No. 29 OF 1953

Bherusingh, s/o Mehtab Sondhia, residence village Amlabe, Tehsil Khilchipur, District Rajgarh (M.B.)—Petitioner.

versus

1. Shri Prabhu Dayal Chaubey s/o Bhanvarlal Chaubey residence village Kachhikhedi; Tappa Zirapur, Tehsil Khilchipur, District Rajgarh (M.B.).
2. Shri Balbahadursingh s/o Kesarsingh Rajput residence village Dhatarwada Tappa Zirapur Tehsil Khilchipur, District Rajgarh (M.B.).
3. Shri Raghunath Prasad s/o Laxminarayan Bhavsar residence Zirapur, Tappa Zirapur Tehsil Khilchipur, District Rajgarh (M.B.).
4. Shri Sadashivrao Satpute, B.A., LL.B., Brahmin residence Susner Tehsil Susner, District Shajapur (M.B.)—Respondents.

M/S Homi F. Daji and D. C. Bharucha Counsel for the Petitioner.

Mr. W. Y. Pande Counsel for the Respondent No. 1.

ELECTION PETITION UNDER SECTION 80 OF THE REPRESENTATION OF THE PEOPLE ACT No. 43 OF 1951.

ORDER

The Petitioner Bherusingh s/o Mehtab Sondhia was a candidate for Election to the Legislative Assembly Khilchipur West Constituency No. 49. The Returning Officer rejected his nomination paper on the ground that the petitioner was a Patel and as such "An Adhikari" Prabhu Dayal Respondent No. 1 was a successful candidate securing 7,296 votes. The next being Sadashivrao Satpute with 2,335. The Petitioner claimed that the whole Election was void because of the improper rejection of his nomination paper, and challenged the validity of the Election of Respondent No. 1 on the ground of corrupt practices. He also contended that the Ramnagar Polling Station had been "transplanted" in direct contravention of the order of the President of India.

The petition lacked particulars of the alleged corrupt and illegal practices and time was given to petitioner to supply defects by amendment of the schedules. The petitioner on 13th August 1952 submitted what may be called a petition which carried the case no further and by our order dated 20th September 1952 we held that the allegations of corrupt practices did not meet the requirements of law and that part of the case failed.

On the other contentions four issues were framed on 20th September 1952.

1. Is the Petitioner a Patel and as such does he hold an Office of profit under the Government?
2. Was the rejection of his nomination paper on the above ground proper in the circumstances in this case?
3. Was there any transplantation of the Ramnagar Polling Station and was it without order of the President as alleged?
4. If so how is the Election affected?

The question of Pateli being an office of profit was raised in several cases before us and by our order dated 4th December 1952 (which is annexed hereto) we held that Pateli was an office of profit and, therefore, a disqualification under the Constitution of India. It is conceded on behalf of the petitioner that the order fully covers issues Nos. 1 and 2.

As regards the third issue it appears that by Notification No. 4561

11B-13-2005

dated 7th May 1951 and published in the Gazette dated 12th May 1951, the Madhya Bharat Government directed eleven villages of the Khilchipur Tehsil including Ramnagar be transferred to the Zirapur Tappa. This purported to be under the Revenue Administration and Ryotwari Land Revenue and Tenancy Act. The proposals for delimitation of Constituencies had already been submitted to the President of India and the Electoral Rolls had been published in accordance with the delimitation proposed prior to the transfer of the village to the Zirapur Tappa. The Chief Electoral Officer Madhya Bharat, therefore, intimated to the Government by his letter No. 11844 of 14th December 1951 that the Rolls as finally published could not be altered. The result was that the Notification dated 7th May 1951 altered the jurisdiction for Revenue purposes only. It did not affect the delimitation or the Election in as much as the voters went to the poll on the published lists which remained unaffected by the Notification. The allegation that Ramnagar Polling Station was wrongly transplanted to Constituency No. 49, is, therefore, without substance.

But even otherwise it cannot be said that the result of the Election could have been otherwise. The difference in the votes obtained by Respondent No. 1 and the next in order namely Respondent No. 4 is 4961 and it is conceded that this difference would not have been wiped out even if the voters in the eleven villages of Ramnagar had voted *en bloc* for a candidate other than the first Respondent.

We, therefore, hold that there was no transplantation of the Ramnagar Polling Station and that the Election is in no way affected. The petition is dismissed with costs. Pleader's fee Rs. 100.

(Sd.) R. N. SHINGAL, }
(Sd.) M. B. REGE, } *Members.*

The 19th December, 1952

(Sd.) AMAR NATH,
Chairman,
Election Tribunal, Indore.
(Madhya Bharat).

Election Petition No. 29/52.

ORDER

The question at issue in this case is whether Pateli is an office of profit under the Government so as to constitute a bar to the Election of the holder to membership of the Legislative Assembly of the State.

Article 191 of the Constitution of India provides *inter alia* that a person shall be disqualified for being chosen as and for being a member of profit under the Government of India or the Government of any State specified in the first schedule other than an office declared by the Legislature of the State by law not to disqualify its holder and the tests for the determination of the question would be—

1. Is Pateli an office under the Government, and
2. Is it an office of profit.

Section 133 of the Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act No. 66 of 1950 provides that

"Subject to the rules made under this Act, one or more Patels may be appointed for every village....." We understand that rules have yet to be framed under the Act and in absence of such rules, we have under section 4 of the Regulation of Government Act No. I of 1948 to apply the rules in force in the State in the Territory of which, as prior to its integration into Madhya Bharat the village of

which the Pateli is in question was situated. In the Holkar State the office of a Patel was considered to be of great importance and Circular No. 24 dated 24th February 1932 provided that no Patel could be appointed or removed from office save with the assent and concurrence of the Ruler. On general principles the Rulers of integrating States were sovereign and to them all land in the State belonged. The Patel was appointed for the performance of duties under the Land Revenue systems and the appointment and removal rested with the Government or the Ruler as the Head of the Government. The Madhya Bharat Act now gives the Subha (Collector) the power to remove a Patel from office and there can, therefore be no doubt that the office of the Patel is one under the Government. It has been held in *S. N. Holder V. S. N. Malik* of Jagatnarayan's Indian Election Petitions that one of the tests is by whom the holder of an office is liable to be dismissed and in our view the matter is beyond dispute by reasons of the enumeration under section 123 clause 8 Exp. b of persons included in the term "person serving under the Government of any State" which includes a Patel. The answer to the first test must, therefore, be in the affirmative.

In Jagir villages there was an assignment of proprietary rights to the Jagirdar by the sovereign who nevertheless retained final control, and under the systems of Land Revenue the Patel was amenable to the control of the Ruler and his Government. The Madhya Bharat Act 66 of 1950 defines in section provides "A Patel appointed for a village held by an assignee of proprietary rights shall in addition to the duties mentioned in sub-sections (1) and (2) also perform similar duties in relation to the assignee of proprietary rights". There is no distinction now in the matter of appointment and removal of Patels in Khalsa villages and Jagir villages and what has been said above would, therefore, apply to Patels in Jagir villages too with the result that they would be holding office under the Government.

One of the duties of the Patel is the collection of Revenue and remuneration is attached to the office. Act 66 of 1950 provides for the remuneration of Patels. Section 134(1) says:—"The remuneration of the Patel may consist of so much Inam or muafi or rent free land as existed in his name prior to the commencement of this Act with or without such cash remuneration as may be prescribed by Rules made under this Act".

In Khalsa villages there can be no doubt that "profit" is attached to the office of the Patel. In the case of assignment of proprietary rights the office as we have held above the office is one under the Government, but a distinction could be drawn in that the remuneration is not received by the Patel direct from the Government but from the assignee. The distinction is however without a difference for under the provisions of Act 66 of 1950, he is entitled to remuneration either by way of a grant of land or cash; and it would in the view we take be immaterial whether it is paid direct from the State fisc or by the assignee who under the law is under a duty to pay it. It has been held that the actual making of profit is not necessary to make an office one of profit and it is enough if the holder may reasonably be expected to make a profit out of it (*Delave V. Hill* coat quoted in *Basu's Constitution of India* at page 314 I edition).

We, therefore, hold that Pateli is an office of Profit under the Government.

(Sd.) R. N. SHINGAL. }
(Sd.) M. B. REGE. } *Members.*

The 4th December, 1952.

(Sd.) AMAR NATH.

Chairman,

Election Tribunal, Indore.

(Madhya Bharat).

[No. 19/29/52-Elec.III.].

S.R.O. 213.—WHEREAS the election of Shri Dutia Raul of Khairamundh, P. S. Kishorenagar, Athmallik Sub-Division, District Dhenkanal, as a member of the Legislative Assembly of Orissa from Athmallik constituency, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mahendra Sahu, son of the late Kartick Sahu, resident of Himitira, P. S. Kishorenagar, Athmallik Sub-Division, District Dhenkanal;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, CUTTACK.

PRESENT:—Sri N. C. Ganguli, M.A., B.L.,—*Chairman.*

Sri R. C. Mitra, }
Sri K. D. Chatterji, } *Members.*

The 13th January, 1953.

ELECTION CASE No. 2 OF 1952.

Mahendra Sahu of Himitira in P. S. Kishorenagar, Athmallik Sub-Division, District Dhenkanal, Orissa—*Petitioner.*

Versus

1. Dutta Raul of Khairamunda, P. S. Kishorenagar, Athmallik Sub-Division, District Dhenkanal, Orissa.
2. Bhagaban Behera of Dhaurapalli, P. S. Kishorenagar, Athmallik Sub-Division, District Dhenkanal, Orissa—*Respondents.*

Pleader for the Petitioner: Sri J. N. Mitra, Advocate & Sri S. C. Ghosh, pleader.

Pleader for Respondent No. 1: Sri B. K. Pal, Advocate & Sri S. C. Ray, Sri M. S. Ray and Sri P. Kar, pleaders.

Pleader for Respondent No. 2: Sri G. N. Sen Gupta, Advocate.

JUDGMENT

This is a petition by an elector from the Athmullick Constituency for setting aside the election from that constituency of Respondent No. 1. There were four candidates, namely, Respondents 1 and 2, Purandar Pradhan and Baldyanath Hota. Purandar and Baldyanath Hota are Sarbarakars and on that ground the Returning Officer held that they were disqualified under Article 191 (1) (a) of the Constitution of India and refused their nomination under Section 36 (2) (b) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). Respondent No. 2 contested the election and was defeated.

The petitioner challenges the election of Respondent No. 1 on three grounds (1) That the nomination paper of Purandar Pradhan and Baldyanath Hota were improperly rejected as they are not holders of any office of profit under the State of Orissa. (2) That if it is held that a Sarbarakar is the holder of an office of profit under the State, the Respondent No. 1 and 2 having attempted to obtain and having obtained assistance from Sarbarakars in furtherance of the prospects of their election are guilty of corrupt practices within the meaning of Section 123 (8) of the Act. (3) That the respondent No. 1 is guilty of corrupt practices by reason of systematic appeal to and use of a religious symbol.

It is conceded by all the parties that if the petitioner succeeds on the first ground it is unnecessary to refer to the allegations of the parties with regard to the corrupt practices covered by grounds Nos. 2 and 3.

The following issues were framed:—

ISSUES

1. Is the petition liable to be dismissed under Section 90 (4) of the Representation of People Act as contravening the provisions of Sections 81 and 83 of the Act?
2. Can the election be declared to be wholly void on the ground of improper rejection of any nomination and has the result of the election been materially affected by any such rejection?

3. Can the election of respondent No. 1 be declared void on the ground of corrupt practices?
4. Did the respondent No. 2 commit any corrupt practice?
5. Is the Sarbarakar held by Purandar Pradhan and Baldyanath Hota in Athmullik State an office of profit within the meaning of Article 191 (1) (a) of the Constitution of India?
- 6 To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 5.

It is conceded by the parties that if we hold that a Sarbarakar is not a holder of an office of profit then the election has been materially affected by the rejection of the nomination papers.

With regard to the status of Sarbarakars, their functions, rights and duties, the only record that we have is the Settlement Report of 1931 (Ex. B) and a Sarbarakar Patta of 1917 (Ex. 4). We have also been referred to the Report on Land Tenure and the Revenue system of the Orissa Chatisgarh States by Sri R. K. Ramadhyani, officer on special duty. The position of Sarbarakars may be briefly stated. He is appointed by the State mainly for the purpose of collecting the revenue. He is liable to be suspended or removed by the State. He remains personally liable for the entire revenue whether he collects it from the tenants or not. If he fails to pay the revenue, the outstanding revenue is to be realized from his own properties. Out of the collection he gets a commission on a sliding scale. He also gets what is known as "Bhogra" lands which he holds on payment of rent so long as he remains a Sarbarakar. They are described in Ramadhyani's report (page 11, para. 27) as "Service holdings assessed to rent". These Bhogra lands are not heritable or alienable. The Sarbarakar right is inalienable but is descendible from father to son subject to the fitness of the heir. He is not to be removed except on some specified grounds (*e.g.*, conviction of an offence punishable with 2 years' R.J.). The heir of a previous Sarbarakar gets the Sarbarakar even though he is a minor. In all cases either of succession or of a new appointment the Sarbarakar pays a Salam and gets the order of appointment. Apart from the collection of revenue his general duties are preservation of village boundaries, trees and forests, vigilance over crimes and offenders and other suspicious persons settling fallow lands and vacant holdings and carrying out the orders of the Ruler for the proper administration of the village.

It will be seen that these incidents of Sarbarakar contain elements of office as well as elements that are inconsistent with an office. The petitioner contends that essentially a Sarbarakar is not an office holder and Mr. Pal for the Respondent No 1 contends that essentially he is an office holder. The point for decision is whether his position taken as a whole is the position of an office holder or not.

Mr. Pal for Respondent No. 1 argues that the Sarbarakar is an office holder, firstly because he is appointed, and is subject to removal by, the Ruler and since the merger, by the State; secondly because his essential function is a function of the State, namely collection of revenue, thirdly because his appointment does not create any interest or property in land and fourthly, because as to the manner of performance of his duties he is subject to the control of the State; and fifthly because his rights are inalienable.

To explain the meaning of the words "Office of profit" Mr. Pal refers to Basu's Commentary on the Constitution of India at pages 343 and 346 (2nd Edition), where the learned author says that "office" means employment with fees and emoluments and the word "profit" is used in a wider sense to include any advantage. He also refers to Aiyar's Law Lexicon where a public office is explained as involving "a delegation to the individual of some of the sovereign functions of the Government to be exercised by him for the benefit of the public". According to Mr. Pal collection of revenue, which is the chief feature of Sarbarakar, is a function of the sovereign. That may be so, but the function of the Sarbarakar is not completely or accurately described as "collection of revenue". Although he collects revenue he is, under his engagement with the Government personally liable for its payment. Mr. Pal also relies on Section 6 of the Transfer of Property Act and Section 9 of the Code of Civil Procedure. But Section 6 of the T. P. Act merely says that an office is inalienable and Section 9 C.P.C. recognises the right to sue for an office. Neither provision throws any light on the nature of the "office" of Sarbarakars. Reliance is also placed on the case of Lala Sohoni

Lal Vs. Lala Binda Saran (Indian Election Cases by Sen and Poddar, page 685). In that case the partners carried on the treasury work of certain post offices and the work of Cashier and Pay Master of the N. W. Rly. The firm received a monthly salary and was subject to Government Codes and Departmental Rules. The partners were treated exactly as other Government Servants. They had no other status.

To illustrate offices of profit in England, Mr Pal referred to Schofield's Parliamentary Elections PP 95-102. A series of statutes in England from the reign of Queen Anne to the reign of Queen Victoria have specifically designated certain offices to be disqualifying officers. They can not possibly throw any light on the question before us.

On the other hand Mr. Mitra for the petitioner points out the incidents that are inconsistent with the position of an office holder. In the first place, he argues that an office is inconsistent with heritability. No one who is the heir to an office holder can have any right to an office. But there is no doubt that subject to certain conditions there is a right to succeed to the Sarbarakari. Secondly the payment of *salami* for an office is repugnant to law. Thirdly a Sarbarakar is not merely the collector of revenue but is himself liable for the revenue. Fourthly the interest in the lands granted to him is a tenancy interest enjoyed on payment of rent. Fifthly he is not an office holder under the State as the source of his commission does not come from the State coffers. Sixthly an office cannot be conferred on a minor but minors can be Sarbarakars. Apart from these incidents he points out that at the time of the merger the Sarbarakars were not given a fresh appointment although all State servants were reappointed, that they can be members of the village Panchayats from which State servants are excluded; that that they are not governed by the State Servants' Conduct Rules.

Both Mr. Pal and Mr. Mitra have referred us to the analogy of tenure holders or office holders in other parts of the country under various laws namely, Orissa Tenancy Act, C. P. Tenancy Act, the Madras Hereditary Village Offices Act (iii) of 1895 etc. The Madras Act (Act III of 1893) requires consideration as the offices are undoubtedly hereditary. Mr. Pal says that the position of Sarbarakar is analogous to that of patels, Karanams and other officers in Madras. But these offices are regulated by Statute. The Act provides a complete Code for their regulation and the Board of Revenue has framed elaborate Regulations for that purpose. They carry a salary. The duties are prescribed in the Village Officers' Manual. Pay, leave, qualifying examinations everything is prescribed by rules and in every respect the control of Government over these officers is so complete that they are in no different position than the ordinary Government servants.

Mr. Mitra contends that the position of Sarbarakars is analogous to that of Gauntias, Lambardars etc. under the tenancy law of C.P. who are not regarded as office-holders. According to Mr. Pal they are really tenure-holders enjoying an interest in land. Reference has been made to Sambalpur Land Revenue Report (page 6 and 48 to 54), The Sambalpur Manual (pages 52 (Note), 53, 96, 97, 101, 163-166, 172, 184 and 354). Sections 13, 15, 21(2) and 235 of the Orissa Tenancy Act was referred to which deal with tenure-holders and service tenures. Mr. Mitra also relies on the analogy of Ghatwali tenures.

We do not think it is justifiable to proceed on analogy. The position of persons like Sarbarakars is very difficult to describe except where a statute defines their status. What we have to decide is whether or not from the known incidents of Sarbarakari in Athmullick—as to which there is hardly any controversy—the proper inference is that Sarbarakars are holders of an office of profit under the State within the meaning of Article 191 (1) (a) of the Constitution. In our view the Article refers to persons who hold a position which is entirely an office of profit (either whole time or part time). Where the position of a person partakes of the character of an office and also contains strong elements inconsistent with an office it is impossible to say that the person is a holder of an office.

Taking all the factors that make up a Sarbarakari, we are of opinion that the position of Sarbarakar is not essentially an office of profit under the State. It is true that they are appointed and removed by the State and that by collection of revenue they are carrying out the function of the State and that in so doing they are under the general control of the State. It is also true that neither the right to collect revenue and to carry out their functions nor the Bhogra land that they enjoy so long as they are Sarbarakars, is transferable. Appointment and dismissal and control over the performance of duties are undoubtedly strong indicia of the character of a servant. But a person subject to such authority and control is not necessarily a servant. Again the delegation of the function of a State does not necessarily create the relationship of master and servant.

The position is well illustrated with reference to certain provisions of the Orissa Grama Panchayet Act, 1948. Under Section 16(4), on which Mr. Pal himself relied, a servant in the employ of Government is not eligible to be elected a member of the Gram Panchayet. But under Section 31 it is permissible for a Gram Panchayet, the members of which must be persons other than servants in the employ of Government, to enter into a contract with the State to collect taxes payable to Government, obviously under the control of the Government. Manifestly the contract contemplated, involving the delegation of a function of the Government, does not make the members Government Servants.

It seems to us that the foundation of the Sarbarakari system is this: The State enters into an engagement with the person who undertakes the liability to pay the entire revenue and for that purpose gets the right to collect the revenue from the tenants. He is not made the proprietor of the soil, as in the case of Zamindars, and remains subject to the control of the State for the performance of his functions and duties. Such an engagement can be terminated by the Government. But the person is something more than a mere servant. We find it difficult to understand the personal liability for revenue if the Sarbarakar was a mere office-holder.

The other features of this peculiar position of Sarbarakars also point to the conclusion that it is something more than an office. In the first place the right to inherit Sarbarakari is unquestionable although the heir may be excluded by reason of certain disqualifications. Ordinarily an office is not heritable although hereditary offices, recognised by Statutes like the Madras Act III of 1895 are not unknown to law. Mr. Pal points out that the heir also is invariably appointed by an order. That may be so but he has a right, (if not disqualified) to be appointed. Secondly a Salami is paid on every appointment. Mr. Ramadhyani in his report, Vol. III in paragraph 30 at page 11 states "When the Sarbarakari falls vacant by the dismissal or death of the Sarbarakar without heirs the village is disposed of generally by auction. In case of ordinary succession where the son is appointed the Salami is 10 per cent of the rent plus five times the rental value of the Bhogra if any". The idea of an office being auctioned is repugnant to law. Although Sarbarakari is referred to in the said report as an "office" or "a post", it is clear that it is not purely an office.

Thirdly an interest in land is created in favour of the Sarbarakar and he is certainly a tenant so far as the Bhogra land is concerned. Mr. Pal contends that that is his remuneration and is an adjunct to his office. It is true that the Bhogra is given because of his office. It may be intended for his remuneration which is to last for the term of his office. But we are concerned with the status created thereby and the status is certainly that of a tenant paying rent.

Fourthly, the source from which he gets his commission is not the general revenues of the State but the collection from tenants from out of which he pays the revenue. It was held in Nawab Talib Mehadi Khan Vs. Raja Md. Akram (Indian Election Cases by Doabia Vol. I page 240) that a manager under the Court of Wards although appointed and liable to be removed by the Financial Commissioner under the control of the Government is not a holder of an office of profit under the Government because the payment of his salary is made out of a private estate.

There is evidence to show that before the merger at any rate, Sarbarakars were not treated as servants or office holders under the State, that they have served in village Panchayats, that the State Servant Conduct Rules were inapplicable to them. On the other hand Mr. Pal has pointed out instances where they have been refused nominations for elections to village Panchayats and to the Legislative Assembly of Orissa. It is unnecessary to refer to this evidence or to go into the question at all since we have to decide the status of Sarbarakars from the incidents of Sarbarakari right and not from instances of their recognition or otherwise as office holders. Mr. Mitra for the Petitioner further contended that whatever may have been the position in the regime of the Ruler there is no clear evidence that Sarbarakars were appointed by the State of Orissa as all other State servants were. Mr. Pal contends that it is in evidence that they are acting as such and no re-appointment was necessary. It is also unnecessary to go into this question.

We did not consider it necessary to deal in detail the arguments based on analogy advanced on behalf of the petitioner and Respondent no.1. The reason is that the essential features of Sarbarakari are admitted as facts by both parties and it is upon those facts that we have to decide the question. On the analysis of the incidents relating to the position of Sarbarakars we hold that they are not holders of an office of profit under the State within the meaning of Article 191 (1) (a) of the Constitution.

Issues 1, 3 and 4.

In view of our decision on issue no. 5 these issues need not be decided.

Issues 2 and 6.

As a result of our decision on issue No. 5 the election from the Athmullick Constituency must be declared to be wholly void under section 100(1) of the Act.

ORDER

It is accordingly ordered that the petition be allowed and the election to the Orissa Legislative Assembly from the Athmullick constituency is declared wholly void. Petitioner will get costs which we assess at Rs. 200/- each of the Respondents 1 and 2 to pay Rs. 100/-.

(Sd.) N. C. GANGULI, *Chairman.*
13-1-53.

(Sd.) R. C. MITRA, *Member.*
13-1-53.

(Sd.) K. D. CHATERJI, *Member.*
13-1-53.

[No. 19/63/52-Elec. III.]
P. S. SUBRAMANIAN,
Officer on Special Duty.

